

D-16

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 14, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 09MD-128

Maui

Cancellation of Revocable Permit No. S-5117 and Issuance of a Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of Lokelani (AOAO Lokelani) for Rubble Rock Revetment Purposes, Lahaina, Maui, Hawaii, Tax Map Key: (2) 4-3-006:065 (seaward).

APPLICANT:

Association of Apartment Owners of Lokelani, a Non-Profit Corporation.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of AOAO Lokelani, Lahaina, Maui, Hawaii, identified by Tax Map Key: (2) 4-3-006:065, as shown on the attached map labeled Exhibit (A).

Additional Exhibits: Exhibit (B) GIS Overview, Exhibit (C) Shoreline Survey Map of Parcels 016 and 065, Exhibit (D) Photos of Rock Revetment.

AREA:

3064 square feet, more or less.

ZONING:

State Land Use District:

Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO
X

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-5117 to AOAO Lokelani (permittee), for the purpose of constructing a rubble rock revetment. This permit was inceptioned on February 19, 1975.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing rubble rock revetment over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Refer to Exemption Notification attached as exhibit (E).

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO ____
Registered business name confirmed:	YES <u>x</u>	NO ____
Applicant in good standing confirmed:	YES <u>x</u>	NO ____

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

At its meeting on February 28, 1975 under agenda item number F-7, the Board approved the issuance of Revocable Permit No. S-5117 to the Association of Apartment Owners of Lokelani. On March 5, 1975 the Maui County Planning Department issued a Shoreline Setback Variance.

The subject revetment was legally constructed shortly thereafter to prevent erosion to the land area seaward of the AOAO Lokelani complex. It is approximately 3064 square feet in size and constructed of rock boulders and concrete and situated within the Conservation District, classified as Resource Sub-zone.

Per correspondence from the Office of Conservation and Coastal Lands (OCCL) Administrator Mr. Sam Lemmo dated February 22, 2010, there is no objection to the retention of the subject revetment through an appropriate land disposition as designated by the Maui Land Division. Further, it was determined that no conservation district violations exist with regards to this legally constructed and approved structure.

Staff did not solicit agency comments as there will be no change in use from the current month-to-month permit to the long-term non-exclusive easement.


The AOAO of Lokelani has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Cancellation of Revocable Permit No. S-5117.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-3-006:016, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to AOAO to Lokelani covering the subject area for Rubble Rock Revetment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-3-006:016, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,


for Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



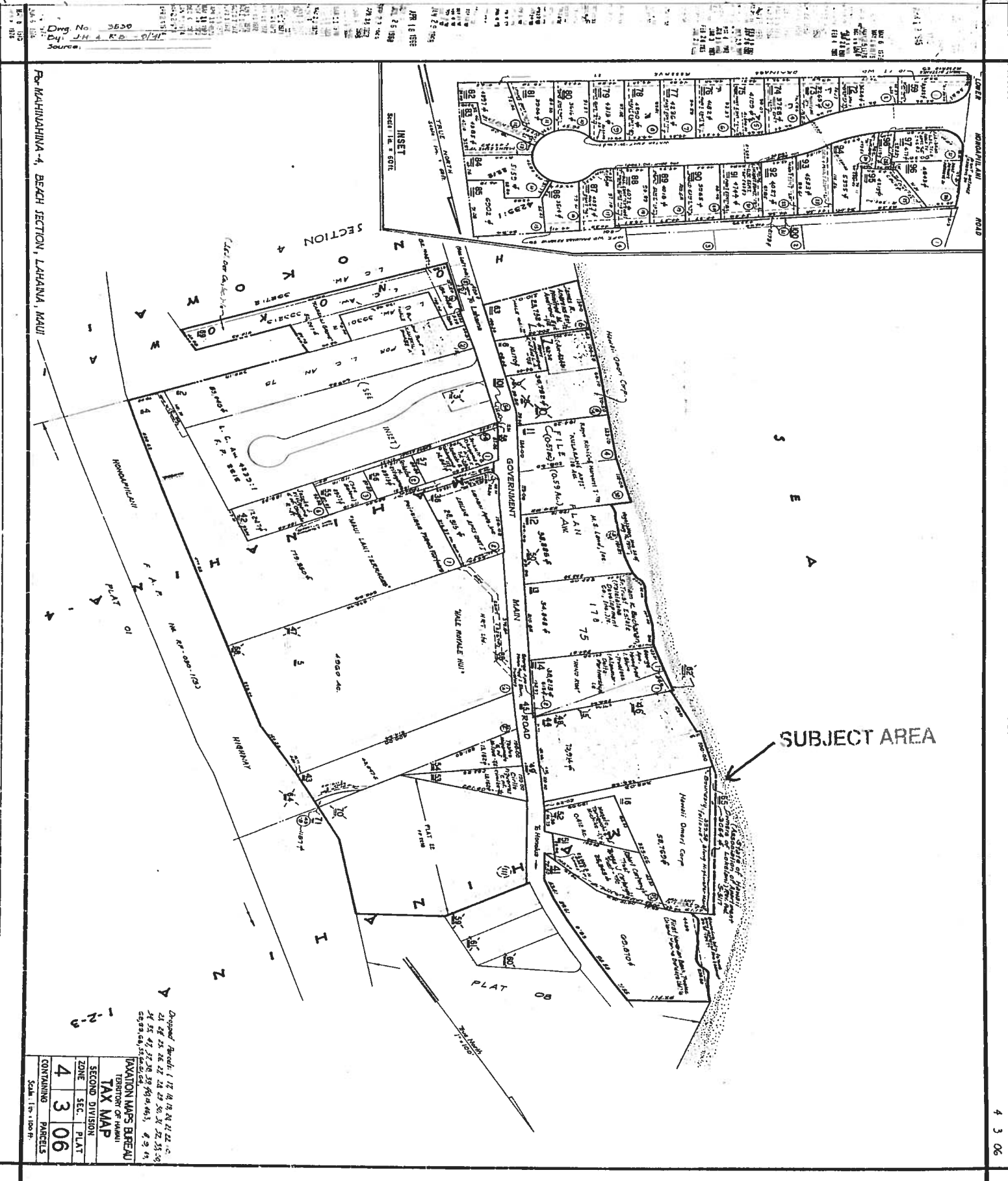


EXHIBIT A

Blue: State Land
Red: Private Property

State of Hawaii
Revetment
(2) 4-3-006:065

AOAO Lokelani
(2) 4-3-006:016

Exhibit B

The shoreline as delineated in red is hereby certified as the shoreline as of

JUN 17 2009

Norman K. Murekani
Chairperson, Board of Land and Natural Resources

SHORELINE SURVEY PARCELS 16 AND 65 OF TAX MAP KEY (2) 4-3-06 BEING A PORTION OF GRANT 1166 TO D. BALDWIN, J. F. POGUE AND S. E. BISHOP MAHINAHUA, KAHANAPALI, LAHANA, MAUI, HAWAII

DATE WORK DONE: 2008
DATE OF SURVEY: 2008
REVISED: APRIL 28, 2009

OWNER:
ASSOCIATION OF APARTMENT OWNERS OF LOKELANI
(OWNER PARCEL 16 AND LESSEE PARCEL 65)

SITE ADDRESS:
3883 LOWER HONOPILANI ROAD
LAHANA, HAWAII, 96761

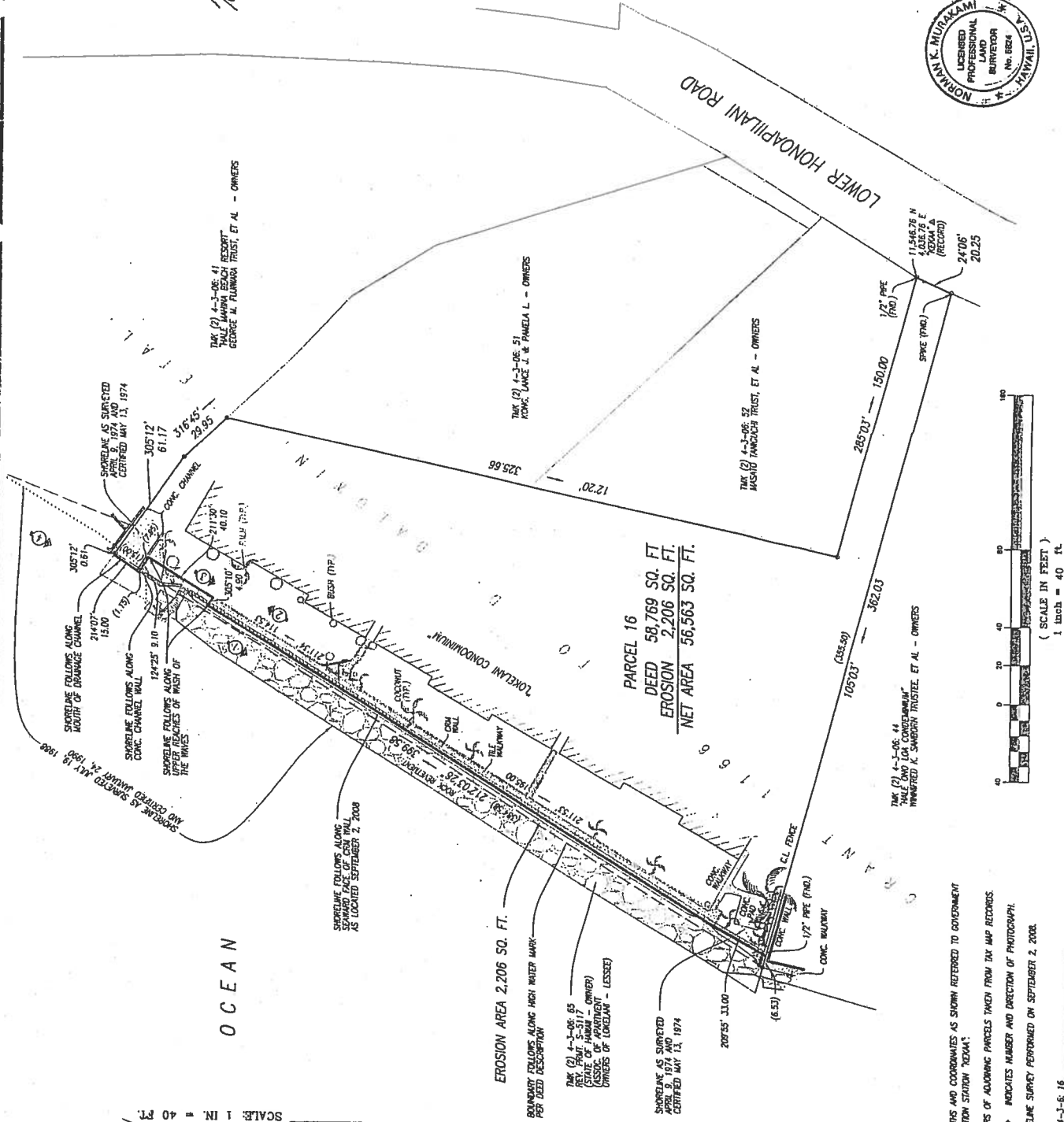
ControlPoint Surveying, Inc.
1129 Lower Main Street, Suite 102
Honolulu, HI 9793

This work was prepared by me or under my supervision.

Norman K. Murekani
Norman K. Murekani
Licensed Professional Land Surveyor
Certificate No. LS-5824, Exp. 4/30/10



15' x 21' = 22 SQ. FT.

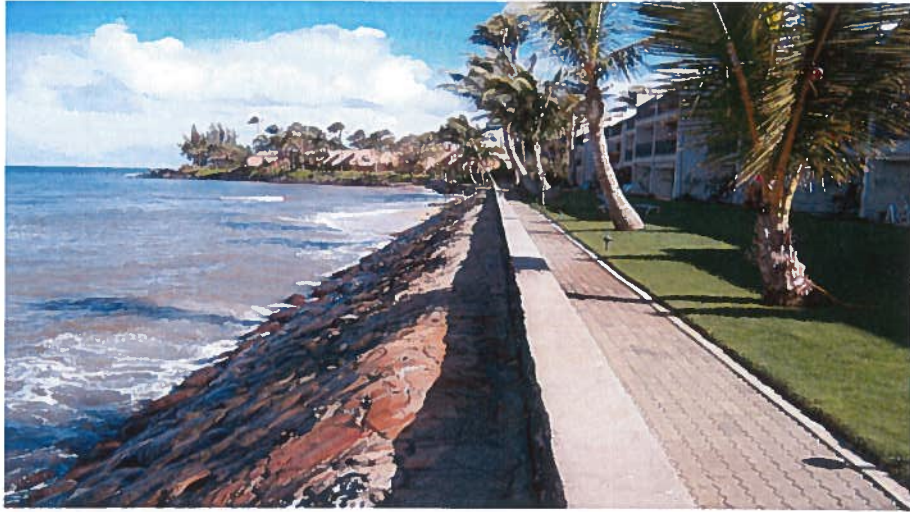


CONTROLPOINT SURVEYING, INC.
1129 Lower Main Street, Suite 102
Honolulu, HI 9793

- NOTES:
1. ADJUSTMENTS AND COORDINATES AS SHOWN REFERRED TO GOVERNMENT TRIANGULATION STATION "KOAHA".
 2. OWNERS OF ADJOINING PARCELS TAKEN FROM TAX MAP RECORDS.
 3. ② INDICATES NUMBER AND DIRECTION OF PHOTOGRAPH.
 4. SHORELINE SURVEY PERFORMED ON SEPTEMBER 2, 2008.

TAX MAP KEY (2) 4-3-06: 16

EXHIBIT "C"



Rock Revetment fronting the AOA of Lokelani at
TMK: (2) 4-3-006:065

EXHIBIT "D"



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 14, 2010

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Issuance of Term Non-Exclusive Easement to AOA of Lokelani.
Project / Reference No.:	PSF No. 09MD-128
Project Location:	Mahinahina, Lahaina, Hawaii
Project Description:	Granting of a Term Non-Exclusive Easement for Seawall Encroachment Purposes (3,064 sq. ft.).
Chap. 343 Trigger(s):	Use of State Lands in Conservation District (Shoreline)
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states: Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR 11-200-8 (a)(1)].
Consulted Parties:	Kimberly Mills of the Office of Conservation and Coastal Lands was consulted as a source authority having jurisdiction or expertise in this matter, and concurs that the exemption identified above is applicable to and appropriate for the proposed project.
Recommendation:	The Board is recommended to find that it is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

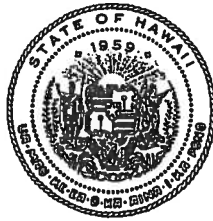
EXHIBIT "E"

Laura H. Thielen, Chairperson

Date

LINDA LINGLE
GOVERNOR OF HAWAII

RECEIVED
LAND DIVISION



2010 SEP 10 A 11:02

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

RECEIVED
CONSERVATION
COASTAL LANDS

2010 MAR -1 A 8:30

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:AB

Correspondence: MA-10-150

Marshall Gray
Bow Engineering & Development, Inc.
1953 South Beretania Street, PH-A
Honolulu, Hawai'i 96826

FEB 22 2010

SUBJECT: Lokelani Condominium Shoreline Structure Repair, Located at 3833 Lower Honoapi'ilani Highway, Lahaina, Maui, TMK (2) 4-3-006:016

Dear Mr. Gray:

The Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) has reviewed the information you provided regarding your project to repair a shoreline structure at the Lokelani Condominiums, located at 3833 Lower Honoapi'ilani Highway, Lahaina, Maui, TMK (2) 4-3-006:016.

According to previous correspondence (Violation MA-09-29) regarding the subject shoreline structure, high tides and wave action caused damage along the northern 40 feet of the revetment adjacent to the Māhinahina Channel. The subject revetment, excluding the concrete stairs, was legally constructed on State land to prevent erosion in 1975; the DLNR issued Revocable Permit (RP) No. S-5117 for the subject revetment on February 19, 1975. Based on previous statements from the applicant, the stairs may have been constructed by Maui County and the USDA in conjunction with drainage channel improvements in 1991-1992.

Since the structure is authorized by RP No. S-5117 and falls in the Conservation District, seaward of the shoreline, it is subject to the OCCL's non-conforming structure repair policy as per HAR §13-5-37 for non-conforming uses. This policy allows for repairs and maintenance of legal or non-conforming structures up to 50 percent of the total replacement cost. It is also our understanding that the DLNR Land Division/Maui District Land Office desires to move toward a long term disposition of a 55-year Term Non-Exclusive Easement instead of the current month-to-month Revocable Permit for the encroaching section of the revetment. The OCCL has no objection to retention of the subject revetment through an appropriate land disposition as designated by the Maui District Land Office.

According to your recently submitted plans, the subject project involves the replacement and repair of 41 linear feet of grouted rock revetment and the temporary placement of a 60-linear foot sandbag and steel sheet pile barrier to contain the work. In addition, work will consist of replacing the staircase, landings, metal railings, walkways, waterline, and showerpad.

According to OCCL records, the proposed work appears to be located land seaward of the shoreline, which is designated State Land Use Conservation District¹ Resource subzone, which is under the jurisdiction of the State of Hawai'i. The proposed work appears to be an identified land use in the Conservation District pursuant to Hawai'i Administrative Rules (HAR) §13-5-22 *Identified Land Uses in the Protective Subzone*, P-9 STRUCTURES, EXISTING (A-1), as well as within the terms and conditions of the DLNR Revocable Permit No. S-5117.

The OCCL has no objections to the proposed project of repair and maintenance of the subject shoreline structure located at the Lokelani Condominiums, located at 3833 Lower Honoapi'ilani Highway, Lahaina, Maui, TMK (2) 4-3-006:016, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State, and County governments, and applicable parts of Chapter 13-5, HAR;
2. The applicant, its successors, and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall obtain appropriate authorization from the DLNR Land Division for the occupancy of State lands, if applicable;
4. The applicant will transfer from the current Revocable Permit to a long-term disposition of a 55-year Term Non-Exclusive Easement. Contact the Maui District Land Office of the DLNR Land division at (808) 984-8103 to begin this process;
5. The applicant shall comply with all applicable State Department of Health (DOH) administrative rules;
6. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawai'i, and by Hawai'i statutory and case law;
7. During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;
8. The project shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
9. The project shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;

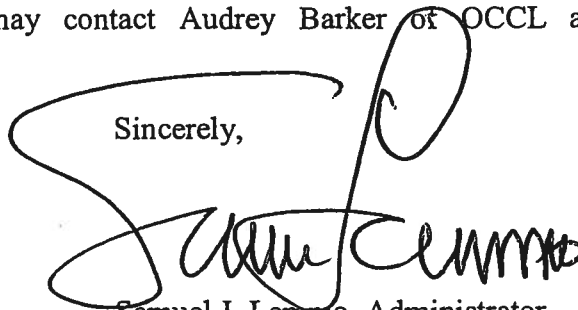
¹ The Conservation District includes lands seaward of the shoreline as defined by Hawai'i Revised Statutes (HRS) Chapter 205A-1.

10. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities/uses;
11. The applicant shall ensure that excessive siltation and turbidity are contained or otherwise minimized through the use of silt containment devices or barriers;
12. The applicant(s) shall implement standard Best Management Practices (BMPs), including the ability to contain and clean up fuel; fluid or oil spills immediately for activities/uses. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The OCCL staff shall be contacted immediately at 587-0377, to conduct a visual inspection and to provide appropriate guidance; and
13. Where any interference, nuisance, or harm may be caused, or hazard established by the activities authorized under this letter, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
14. Any work or construction authorized by this letter shall be initiated within six (6) months of the approval of such use, and, unless otherwise authorized, shall be completed within twelve (12) months of the approval of such use. The applicant shall notify the Department before construction activity is initiated and when it is completed;
15. The applicant must submit a written completion report to the OCCL within three (3) months of completion of the project. The completion report must include, as appropriate, descriptions of the construction activities, discussion(s) of any deviations from the proposed project design and the cause of these deviations, results of any environmental monitoring (primarily sand movement observations and turbidity observations), discussion(s) of any necessary corrective action(s), and photographs documenting the progress of the authorized work before, during, and after construction;
16. Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization;
17. The applicant understands and agrees that the approval does not convey any vested right(s) or exclusive privilege.
18. The applicant shall take measures to ensure that the public is adequately informed of the project work once it is initiated and the need to avoid the project area during the operation and shall notify all abutting property owners and community organizations that may be affected by the proposed action;
19. The DLNR reserves the right to terminate this authorization if it is determined the structure is having an adverse impact on the environment or if other shore protection alternatives are available;

20. At the conclusion of work, the area shall be clean of all construction material, and the site shall be restored to a condition acceptable to the Department;
21. The Department reserves the right to impose additional terms and conditions on projects authorized under this letter, if it deems them necessary; and
22. Failure on the part of the applicant to comply with any conditions imposed under this letter shall render the letter null and void.

Please acknowledge receipt of this letter, with the above noted conditions, in the space provided below. Please sign two copies, retain one and return one copy to OCCL **within 30 days**. Should you have any questions, you may contact Audrey Barker of OCCL at 587-0377 or audrey.t.barker@hawaii.gov.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

I concur with the conditions of this approval:


Applicant Signature

2/25/10
Date

c: Chairperson
MDLO
Maui Planning Department
Department of the Army, Regulatory Branch (File No. POH-2009-00339)
U.S. Army Engineer District, Honolulu
Forth Shafter, HI 96858-5440